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W.S. INDUSTRIES, INC. and VINH LAM

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

A.C.T. 898 PRODUCTS, INC., a)	CASE NO. 8:16-CV-00476-DOC-JCG
California Corporation,)	<i>[Assigned to Judge David O. Carter, Dept.</i>
)	<i>9D]</i>
Plaintiff,)	
)	STIPULATED PROTECTIVE ORDER
vs.)	
)	
W.S. INDUSTRIES, INC.; VINH)	Complaint Filed: 03/11/16
LAM, an individual; and DOES 1)	
through 10, inclusive,)	Trial Date: None
)	
Defendants)	
)	

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the
 2 applicable legal principles. The parties further acknowledge, as set forth in Section
 3 12.3, below, that this Stipulated Protective Order does not entitle them to file
 4 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
 5 that must be followed and the standards that will be applied when a party seeks
 6 permission from the court to file material under seal.

7 B. GOOD CAUSE STATEMENT

8 This action is likely to involve trade secrets, customer and pricing lists and
 9 other valuable research, development, commercial, financial, technical and/or
 10 proprietary information for which special protection from public disclosure and from
 11 use for any purpose other than prosecution of this action is warranted. Such
 12 confidential and proprietary materials and information consist of, among other things,
 13 confidential business or financial information, information regarding confidential
 14 business practices, or other confidential research, development, or commercial
 15 information, information otherwise generally unavailable to the public, or which may
 16 be privileged or otherwise protected from disclosure under state or federal statutes,
 17 court rules, case decisions, or common law.

18 Accordingly, to expedite the flow of information, to facilitate the prompt
 19 resolution of disputes over confidentiality of discovery materials, to adequately
 20 protect information the parties are entitled to keep confidential, to ensure that the
 21 parties are permitted reasonable necessary uses of such material in preparation for
 22 and in the conduct of trial, to address their handling at the end of the litigation, and
 23 serve the ends of justice, a protective order for such information is justified in this
 24 matter. It is the intent of the parties that information will not be designated as
 25 confidential for tactical reasons and that nothing be so designated without a good
 26 faith belief that it has been maintained in a confidential, non-public manner, and there
 27 is good cause why it should not be part of the public record of this case.

1 2. DEFINITIONS

2 2.1 Action: this pending federal law suit

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
6 it is generated, stored or maintained) or tangible things that qualify for protection
7 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
8 Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
10 support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless of
15 the medium or manner in which it is generated, stored, or maintained (including,
16 among other things, testimony, transcripts, and tangible things), that are produced or
17 generated in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as
20 an expert witness or as a consultant in this Action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
27 this Action but are retained to represent or advise a party to this Action and have
28 appeared in this Action on behalf of that party or are affiliated with a law firm which

1 has appeared on behalf of that party, and includes support staff.

2 2.11 Party: any party to this Action, including all of its officers, directors,
3 employees, consultants, retained experts, and Outside Counsel of Record (and their
4 support staffs).

5 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
6 Discovery Material in this Action.

7 2.13 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying, videotaping, translating, preparing exhibits or
9 demonstrations, and organizing, storing, or retrieving data in any form or medium)
10 and their employees and subcontractors.

11 2.14 Protected Material: any Disclosure or Discovery Material that is
12 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
14 from a Producing Party.

15
16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.

22 Any use of Protected Material at trial shall be governed by the orders of the
23 trial judge. This Order does not govern the use of Protected Material at trial.

24
25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
 2 or without prejudice; and (2) final judgment herein after the completion and
 3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 4 including the time limits for filing any motions or applications for extension of time
 5 pursuant to applicable law.

6 7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 9 Party or Non-Party that designates information or items for protection under this
 10 Order must take care to limit any such designation to specific material that qualifies
 11 under the appropriate standards. The Designating Party must designate for protection
 12 only those parts of material, documents, items, or oral or written communications that
 13 qualify so that other portions of the material, documents, items, or communications
 14 for which protection is not warranted are not swept unjustifiably within the ambit of
 15 this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
 17 that are shown to be clearly unjustified or that have been made for an improper
 18 purpose (e.g., to unnecessarily encumber the case development process or to impose
 19 unnecessary expenses and burdens on other parties) may expose the Designating
 20 Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
 22 designated for protection do not qualify for protection, that Designating Party must
 23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
 26 or ordered, Disclosure or Discovery Material that qualifies for protection under this
 27 Order must be clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents,
 2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
 3 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
 4 "CONFIDENTIAL legend"). Stamping the "CONFIDENTIAL legend" on the cover
 5 of any multipage document shall designate all pages of the document as confidential,
 6 unless otherwise indicated by the producing party. If only a portion or portions of the
 7 material on a page qualifies for protection, the Producing Party also must clearly
 8 identify the protected portion(s) (e.g., by making appropriate markings in the
 9 margins).

10 A Party or Non-Party that makes original documents available for inspection
 11 need not designate them for protection until after the inspecting Party has indicated
 12 which documents it would like copied and produced. During the inspection and
 13 before the designation, all of the material made available for inspection shall be
 14 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
 15 it wants copied and produced, the Producing Party must determine which documents,
 16 or portions thereof, qualify for protection under this Order. Then, before producing
 17 the specified documents, the Producing Party must affix the "CONFIDENTIAL
 18 legend" to each page that contains Protected Material. If only a portion or portions of
 19 the material on a page qualifies for protection, the Producing Party also must clearly
 20 identify the protected portion(s) (e.g., by making appropriate markings in the
 21 margins).

22 (b) for testimony given in depositions that the Designating Party identify the
 23 Disclosure or Discovery Material on the record, before the close of the deposition all
 24 protected testimony. Due to the fact that the parties are direct competitors,
 25 depositions of a party or an officer, director, or employee of a party shall be taken
 26 only in the presence of counsel for a party (including the paralegal, clerical, and
 27 secretarial staff employed by such counsel), court reporter(s) employed in this action,
 28 and any other person as to whom the parties in writing agree.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

(d) The parties may further designate certain discovery material or testimony of a highly confidential and/or proprietary nature as “CONFIDENTIAL—ATTORNEY'S EYES ONLY” (hereinafter “Attorney's Eyes Only Material”). Under the terms of this order, the party making the designation is certifying to the court that there is a good faith basis both in law and in fact for the designation within the meaning of Federal Rule of Civil Procedure 26(c).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 2 or withdrawn the confidentiality designation, all parties shall continue to afford the
 3 material in question the level of protection to which it is entitled under the Producing
 4 Party's designation until the Court rules on the challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 8 disclosed or produced by another Party or by a Non-Party in connection with this
 9 Action only for prosecuting, defending, or attempting to settle this Action. Such
 10 Protected Material may be disclosed only to the categories of persons and under the
 11 conditions described in this Order. When the Action has been terminated, a
 12 Receiving Party must comply with the provisions of section 13 below (FINAL
 13 DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a
 15 location and in a secure manner that ensures that access is limited to the persons
 16 authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 18 ordered by the court or permitted in writing by the Designating Party, a Receiving
 19 Party may disclose any information or item designated "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
 21 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 22 disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of the
 24 Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
 26 disclosure is reasonably necessary for this Action and who have signed the
 27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
3 to whom disclosure is reasonably necessary for this Action and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information;

7 (h) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions; and

9 (i) any other person as to whom the parties in writing agree.

10 7.3 Disclosure of “Attorney’s Eyes Only Material”.

11 Attorney's Eyes Only Material, and the information contained therein, shall be
12 disclosed only to the Court, to counsel for the parties (including the paralegal,
13 clerical, and secretarial staff employed by such counsel), and to experts or
14 consultants (together with their clerical staff) retained by such counsel to assist in the
15 prosecution, defense, or settlement of this action. Attorney’s eyes only material shall
16 not be disclosed to a party, or to an officer, director or employee of a party unless
17 otherwise agreed or ordered. If disclosure of Attorney's Eyes Only Material is made
18 pursuant to this paragraph, all other provisions in this order with respect to
19 confidentiality shall also apply.

20
21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this Action as
25 “CONFIDENTIAL,” that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by the subpoena
 2 or order is subject to this Protective Order. Such notification shall include a copy of
 3 this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 5 the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with
 7 the subpoena or court order shall not produce any information designated in this
 8 action as “CONFIDENTIAL” before a determination by the court from which the
 9 subpoena or order issued, unless the Party has obtained the Designating Party’s
 10 permission. The Designating Party shall bear the burden and expense of seeking
 11 protection in that court of its confidential material and nothing in these provisions
 12 should be construed as authorizing or encouraging a Receiving Party in this Action to
 13 disobey a lawful directive from another court.

14
 15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
 16 IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-
 18 Party in this Action and designated as “CONFIDENTIAL.” Such information
 19 produced by Non-Parties in connection with this litigation is protected by the
 20 remedies and relief provided by this Order. Nothing in these provisions should be
 21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
 23 produce a Non-Party’s confidential information in its possession, and the Party is
 24 subject to an agreement with the Non-Party not to produce the Non-Party’s
 25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party
 27 that some or all of the information requested is subject to a confidentiality
 28 agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection,

the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this

1 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving
4 Party must submit a written certification to the Producing Party (and, if not the same
5 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
6 (by category, where appropriate) all the Protected Material that was returned or
7 destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any
9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
12 reports, attorney work product, and consultant and expert work product, even if such
13 materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.
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4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:
6

7 DATED: October 11, 2016

COLLINS COLLINS MUIR + STEWART LLP

8
9 By: /s/ Rebecca King

10 BRIAN K. STEWART

11 REBECCA S. KING

12 Attorneys for Defendants

13 W.S. INDUSTRIES, INC. and

14 VINH LAM

15 DATED: October 11, 2016

ADLI LAW GROUP, PC

16
17 By: /s/ Hanwei Cheng

18 DARIUSH G. ADLI

19 HANWEI CHENG

20 BRIAN M. NOH

21 Attorneys for Plaintiff

22 A.C.T. 898 PRODUCTS, INC.

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: October 12, 2016

25
26 
Honorable Jay C. Gandhi

27 United States District/Magistrate Judge
28

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
[date] in the case of A.C.T. 898 PRODUCTS, INC. vs. W.S. INDUSTRIES, INC.
(CASE NO. 8:16-CV-00476-DOC-JCG), I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of
this action. I hereby appoint _____ [print or type full
name] of _____ [print or type full address
and telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____